



Signed and Filed: October 17, 2014

A handwritten signature in dark ink, appearing to read "T E Carlson", is written over a horizontal line.

THOMAS E. CARLSON U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No. 12-30217 TC
)	
CARLOS MIGUEL COLLAZO,)	Chapter 7
)	
)	
)	
Debtor.)	
)	
BEVERLY N. MCFARLAND, Chapter 7)	Adv. Proc. No. 14-03079
Trustee,)	
)	
Plaintiff,)	
)	
vs.)	
)	
GIBSON, DUNN & CRUTCHER, LLP,)	
)	
Defendant.)	

MEMORANDUM RE DEFENDANT'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

On September 26, 2014, the court held a hearing on Defendant's motion to dismiss or for summary judgment (the Motion). Peter Bach-y-Rita appeared for Defendant. Richard A. Lapping appeared for Plaintiff. Upon due consideration, and for the reasons stated below, the Motion is denied.

Prior to the hearing, the court issued a tentative ruling indicating that the Motion should be denied. The court hereby

1 adopts that tentative ruling regarding the issues addressed
2 therein.

3 At the hearing, Defendant raised an argument not addressed in
4 the tentative ruling: that the money paid to Defendant was diverted
5 from Mariner Systems or Utuzu, and that Plaintiff Trustee could not
6 assert the rights of these separate entities.

7 Assuming arguendo that the Plaintiff cannot assert the rights
8 of Mariner Systems or Utuzu, the Motion should still be denied. As
9 noted in the tentative ruling, the fact that Debtor performed
10 services for CarQualifier, and that money paid by CarQualifier was
11 used for the benefit of Debtor, gives rise to an inference that
12 Debtor received an interest in the funds in question. Any such
13 interest received by Debtor belonged to the bankruptcy estate. The
14 inference arising from these undisputed facts is sufficiently
15 plausible to defeat Defendant's Rule 12(b)(6) motion and its motion
16 for summary judgment.

17 ****END OF MEMORANDUM****
18
19
20
21
22
23
24
25
26
27
28